

D.T.E. 98-118-A

Application of Boston Edison Company, an electric company under G.L. c. 164, § 1, for Approval of Rate Reduction Bonds under the terms of the Electric Restructuring Act, St. 1997, c. 164.

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ORDER ON MASSACHUSETTS DEVELOPMENT FINANCE AGENCY'S AND
MASSACHUSETTS HEALTH AND EDUCATIONAL FACILITY AUTHORITY'S
MOTION FOR CLARIFICATION

I. INTRODUCTION

On December 3, 1998, Boston Edison Company ("Boston Edison" or "Company") filed with the Department of Telecommunications and Energy ("Department") an application to issue rate reduction bonds ("RRBs") pursuant to G.L. c. 164, § 1H(b). On April 2, 1999, the Department issued an order approving Boston Edison's application. Boston Edison Company, D.T.E. 98-118 ("D.T.E. 98-118"). On March 29, 1999, the Massachusetts Development Finance Agency and Massachusetts Health and Educational Facilities Authority (collectively, the "Agencies") requested that the Department include language in the Order to address "circumstances where the [reimbursable transition cost charge ("RTC Charge")], which is a component of the transition charge, would exceed the then current transition charge until an adjustment of the transition charge is made" (Supplemental Filing of the Agencies at 2 (March 29, 1999) "Supplemental Filing"). The Agencies requested this change to satisfy the bond rating agencies that the RTC Charge will be sufficient to cover the payments on the bonds (id.). In their Supplemental Filing, the Agencies offered two alternative mechanisms to satisfy their concern in the above described circumstances. The first alternative would provide an increase in the statutory rate reduction cap to permit an RTC Charge adjustment (id.

at 3-4). The second alternative would not affect the statutory rate reduction cap, but would provide that the Company would defer collection of the increase in the standard offer rate so long as the deferred amount earns a carrying charge of 10.88% (id. at 4-5). On March 31, 1999, Boston Edison filed comments in support of the Agencies' Supplemental Filing.

In D.T.E. 98-118, the Department acknowledged that there could be circumstances where changes in other rate components would cause the transition charge to go below the RTC Charge. D.T.E. 98-118 at 40. However, the Department did not adopt the Agencies' first proposed alternative stating "it may violate the statutory requirements pertaining to rate reductions." *Id.* Instead, the Department stated that in such circumstances, it will adjust other components of the Company's rates. *Id.* The Department also did not adopt the Agencies' second proposed alternative stating "it would be premature to determine here exactly which component of the Company's rates to adjust." *Id.* Instead, to address the Agencies concerns, the Department did include the following language in D.T.E. 98-118:

In no event shall the transition charge from time to time in effect as approved by the Department in accordance with the Settlement Agreement's methodology and as may be revised by this Financing Order, the Pilgrim Order, or in an order arising from a Separate Proceeding be adjusted below the RTC. If adjustments to the transition charge to meet the required rate reduction would cause the transition charge to fall below the RTC Charge, the Department shall adjust other components of the Company's rates. Conversely, if the RTC Charge, as adjusted, would exceed the then current transition charge, the Department also shall adjust other components of the Company's rates. D.T.E. 98-118, at 40-41, Appendix 1 at ¶ 55.

On April 16, 1999, the Agencies filed a Motion for Clarification of D.T.E. 98-118 ("Motion"). The Agencies seek to clarify what adjustments would happen in the event the transition charge is increased to cover the RTC Charge as well as the timing of any such adjustments (Motion at 2-3). Specifically, the Agencies seek to clarify whether other rates would be deferred and if so, at what carrying charge rate (*id.*). In addition, the Agencies request some minor clarification edits, and a small change to the language that would be required on the customers' bills regarding the RTC Charge.⁽¹⁾ On May 3, 1999, Boston Edison filed comments in support of the Motion ("Company Comments").

II. POSITION OF THE PARTIES

A. Agencies

1. RTC Charge Adjustment

The Agencies state that in D.T.E. 98-118 the Department recognized that there may be circumstances when the RTC Charge would exceed the transition charge and that under such circumstances the transition charge would have to be increased (Motion at 2). According to the Agencies, D.T.E. 98-118 recognizes that under such circumstances, adjustments to the other rates may be necessary to provide the legislatively mandated rate reductions (Motion at 2). However, the Agencies state that the Department's order does not make clear that adjustments to the other rate components would result in deferrals in the collection of those rate components (Motion at 2). Further the Agencies state that

D.T.E. 98-118 does not identify the carrying charge rate that would apply if such deferrals occur (Motion at 2).

The Agencies argue that clarification of these RTC Charge issues is necessary to ensure the nonrecourse nature of the RRBs, and will help in providing the opinions on true sale and non-consolidation that are necessary to achieve the highest possible rating for the RRBs (Motion at 2-3). According to the Agencies, if Boston Edison's revenues are reduced to support the RTC Charge without the payment of an appropriate carrying charge, then there is a link between Boston Edison and the separate special purpose entity set up to own the transition property. In case of a bankruptcy of the Company, resources of the post-petition bankruptcy estate would be subject to depletion to support the RTC Charge (Motion at 2-3,

n. 2). The Agencies contend that such depletion could create significant difficulties for bankruptcy counsel in the issuance of true-sale and non-consolidation opinions (Motion at 2-3, n. 2).

To clarify these issues, the Agencies ask the Department to substitute the following language for the language currently contained in ¶ 55 of D.T.E. 98-118:

If, as a result of a true-up calculation, the RTC Charge would be increased above the transition charge then in effect, the transition charge shall, on the effective date of the RTC Charge adjustment, be increased to the amount of the RTC Charge, as so adjusted, subject to the 3.35 cents/kWh cap on the transition charge. If adjustments to the transition charge necessary to meet the required rate reduction in effect through December 31, 2004 would cause the transition charge to fall below the required RTC Charge, the Department shall instead, effective as of the time of the RTC Charge adjustment, adjust components of Boston Edison's rates and charges, other than the RTC Charge, as necessary to satisfy such rate reduction requirement. If, as a result of such adjustment, Boston Edison is not allowed to collect on a current basis any rate or charge which it would be allowed to collect but for the adjustment of such rate or charge required to maintain the RTC Charge, the portion of such other rate or charge that is not collected on a current basis shall be deferred at the carrying charge from time to time in effect applicable to that portion of the transition charge not constituting the RTC Charge; provided, however, that this provision for deferral of uncollected rates or charges shall apply solely to adjustments required to maintain the RTC Charge as provided herein and nothing in this Order 55 shall affect the Department's legal authority to make a separate determination to adjust Boston Edison's rates and charges on any other basis (Motion at 3-4).

2. Minor Clarification Edits

The Agencies provide an appendix to their motion that contains an "errata sheet" with proposed corrections to D.T.E. 98-118 (Motion at 4; Appendix A). Eight of these proposed corrections are to update the approximate amount of transactions costs and total securitization amounts, which the Agencies argue is necessary for "accuracy" (Motion, Appendix A). Two corrections are proposed to clarify that the estimated amounts for transaction costs do not include any amount for any additional credit enhancements which may be necessary (*id.*). In addition, the Agencies propose to modify a finding and the corresponding ordering clause to clarify that the Department may change the otherwise irrevocable value of the transition property in the event the transition charge goes above the transition charge cap in Boston Edison's Settlement Agreement. Finally, the Agencies propose to substitute the word "affect" for "effect" in one paragraph of the Order to prevent an "unintended meaning" (*id.*).

In addition, the Agencies propose a change to the text that is to be placed on the customers' bills regarding ownership of the transition charge. Pursuant to the Department's order in D.T.E. 98-118, the text is to read, "The reimbursable transition cost ("RTC") charge as a component of the transition charge is being collected on behalf of a special purpose entity (SPE), as the owner of the transition property" (Motion at 4, citing D.T.E. 98-118, at 36). The Agencies propose to replace this text with "Therefore, the Department directs the Company to include the following statement (or, alternatively, language of substantially the same effect as shall be approved by the Department's Consumer Division) in a footnote on customers' bills: 'The reimbursable transition cost ("RTC") charge as a component of the transition charge is being collected on behalf of a special purpose entity ("SPE"), as the owner of the transition property.'" (Motion at 4-5, n.3) The Agencies assert that this proposed change clarifies the instruction, and leaves open the possibility of minor changes to the wording subject to the approval of the Department's Consumer Division (Motion at 4). According to the Agencies, these changes may be necessary to provide the legal name of the special purpose entity or to accommodate bill formatting issues faced by Boston Edison (Motion at 4-5). The Agencies state that in any case, all modifications to the language will reflect the substance of the Department's proposed language, seek to minimize customer confusion, and be subject to the approval of the Department's Consumer Division (Motion at 5). The Agencies state that they have "consulted with Boston Edison with respect to this filing and it has authorized the Agencies to indicate that Boston Edison has no objection to the clarifications and corrections requested herein" (Motion at 1).

B. Boston Edison

1. RTC Charge Adjustment

Boston Edison argues that the requested clarification is necessary in order for bankruptcy counsel to issue the appropriate opinions critical to the overall securitization transaction (Company Comments at 1). Boston Edison states that the Agencies' request ensures that the future operations of the Company, especially during a hypothetical bankruptcy case, will not be "burdened by reductions in rates and charges for future services or other impacts imposed on Boston Edison's assets (other than access charges that have been

sold) to provide a stream of revenue to pay the RTC Charge" (*id.* at 2). Boston Edison argues that this clarification is necessary to ensure that the bonds receive the highest feasible credit rating which will, in turn, translate into greater savings for Company ratepayers (*id.*).

2. Minor Clarification Edits

With respect to the footnote to be included on customers' bills, the Company argues that space limitations on the front of the bill necessitate a minor change in the language (*id.*). The Company proposes that the following language be included on the bills:

"Part of the transition charge which we collect is owned by BEC Funding LLC."

Boston Edison states that this proposed language has been approved by its bankruptcy counsel and will satisfy any bankruptcy opinion considerations (*id.* at 2-3). Boston Edison's position on this issue is slightly different from the Agencies' who propose to leave open the possibility of minor changes to the quoted language which would be subject to approval by the Department's Consumer Division. Boston Edison states that the Agencies approach would also be acceptable provided that the final language is also approved by bankruptcy counsel.

III. STANDARD OF REVIEW

Clarification of previously issued orders may be granted when an order is silent as to the disposition of a specific issue requiring determination in the order, or when the order contains language that is so ambiguous so as to leave doubt as to its meaning. Boston Edison Company, D.P.U. 92-1A-B at 4 (1993); Whitinsville Water Company, D.P.U. 89-67-A at 1-2 (1989). Clarification does not involve reexamining the record for the purpose of substantively modifying a decision. Boston Edison Company, D.P.U. 90-335-A at 3 (1992), *citing* Fitchburg Gas & Electric Light Company, D.P.U. 18296/18297, at 2 (1976).

The Department's policy on reconsideration is well settled. Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation. North Attleboro Gas Company, D.P.U. 94-130-B at 2 (1995); Boston Edison Company, D.P.U. 90-270-A at 2-3 (1991); Western Massachusetts Electric Company, D.P.U. 558-A at 2 (1987).

A motion for reconsideration should bring to light previously unknown or undisclosed facts that would have a significant impact upon the decision already rendered. It should not attempt to reargue issues considered and decided in the main case. Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983). The Department has denied reconsideration when the request rests on an issue or updated information presented for the first time in the motion for reconsideration. Western Massachusetts

Electric Company, D.P.U. 85-270-C at 18-20 (1987); but see Western Massachusetts Electric Company, D.P.U. 86-280-A at 16-18 (1987). Alternatively, a motion for reconsideration may be based on the argument that the Department's treatment of an issue was the result of mistake or inadvertence. Massachusetts Electric Company, D.P.U. 90-261-B at 7 (1991); New England Telephone and Telegraph Company, D.P.U. 86-33-J at 2 (1989); Boston Edison Company, D.P.U. 1350-A at 5 (1983).

IV. ANALYSIS AND FINDINGS

A. RTC Charge Adjustment

In response to the Agencies' Motion for Clarification, we first assess whether the Department's order was, in fact, silent on a central issue and whether that issue "requir[es] determination" in accordance with our standard of review. The Agencies argue that D.T.E. 98-118 is ambiguous as to whether, in circumstances when adjustments to the other rate components are necessary, deferrals in the collection of those rate components would result. Further, the Agencies argue that D.T.E. 98-118 is silent as to the carrying charge rate that would apply if such deferrals occur. Both the Agencies and Boston Edison argue that determination of these issues is required to provide the opinions on true sale and non-consolidation that are necessary to achieve the highest possible rating for the RRBs. The Department's Order in D.T.E. 98-118 is silent on this issue and determination is necessary to effect the true-sale opinion and ultimately the rating of the RRBs.

Despite the Order's silence, if Boston Edison is not allowed to collect on a current basis any rate or charge which it would be allowed to collect but for the adjustment of such rate or charge required to maintain the RTC Charge, such amounts would necessarily be deferred at an appropriate carrying charge. Deferral at an appropriate carrying charge is necessary to ensure that the Company neither gains nor loses from the deferrals. While the language proposed by the Agencies appropriately clarifies the necessity of deferrals when adjustments to rate components are necessary, we do not agree that the appropriate carrying charge for all costs deferred to protect the RTC Charge is "the carrying charge rate from time to time in effect applicable to that portion of the transition charge not constituting the RTC Charge" which is currently 10.88 percent. The actual costs of deferral may be different from 10.88 percent depending on which rates are reduced. As we stated in D.T.E. 98-118, it is premature to determine here exactly which component of the Company's rates to adjust. The Agencies proposed clarification specifies the same carrying charge rate without regard to which rate is reduced. Under this proposal, Boston Edison may potentially gain (or lose) depending on what rate the Department later selects for reduction.

To remedy the Department's silence with respect to the deferrals and carrying charge, we will adopt the Agencies' proposed clarification, modified to link the carrying charge rate for the deferred amounts should to the rate that is being reduced.⁽²⁾

If, as a result of a true-up calculation, the RTC Charge would be increased above the transition charge then in effect, the transition charge shall, on the effective date of the RTC Charge adjustment, be increased to the amount of the RTC Charge, as so adjusted, subject to the 3.35 cents/kWh cap on the transition charge. If adjustments to the transition charge necessary to meet the required rate reduction in effect through December 31, 2004, would cause the transition charge to fall below the required RTC Charge, the Department shall instead, effective as of the time of the RTC Charge adjustment, adjust components of Boston Edison's rates and charges, other than the RTC Charge, as necessary to satisfy such rate reduction requirement. If, as a result of such adjustment, Boston Edison is not allowed to collect on a current basis any rate or charge which it would be allowed to collect but for the adjustment of such rate or charge required to maintain the RTC Charge, the portion of such other rate or charge that is not collected on a current basis shall be deferred at the carrying charge from time to time in effect applicable to that rate or charge which is being reduced; provided, however, that this provision for deferral of uncollected rates or charges shall apply solely to adjustments required to maintain the RTC Charge as provided herein and nothing in this Order 55 shall affect the Department's legal authority to make a separate determination to adjust Boston Edison's rates and charges on any other basis.

B. Minor Clarification Edits

Both the Agencies and the Company request that the Department change the language to be included on the customer bills regarding the ownership of the RTC Charge due to space limitations on the front of the bill. The change in billing language is a request for reconsideration rather than clarification as the parties are asking the Department to reconsider an earlier finding based on previously unknown concerns of bill formatting. Because the language adopted by the Department in D.T.E. 98-118 will not fit the format of the Company's current customer bills we reconsider our earlier finding and direct the Company to include the following statement on customer bills: "Part of the transition charge which we collect is owned by BEC Funding LLC." This language will satisfy any bill formatting and bankruptcy opinion considerations as well as minimize any potential customer confusion.

The other clarification (or reconsideration) edits fall into four categories: 1) word and punctuation changes, 2) modifications to one finding and a corresponding ordering clause regarding the irrevocable value of the transition property, 3) clarification of what amounts are included in transaction costs, and 4) corrections to estimated numbers. The Department allows the Agencies' motion to change the word "effect" to "affect" (Appendix at 35, ¶ 19, line 4) and the addition of a comma after the word "documents" (Appendix at 36, ¶ 19, line 7), finding that our treatment these issues was the result of inadvertence. Making these corrections will prevent unintended meaning. The Department also allows the Agencies' motion to modify a finding and the corresponding

ordering clause to clarify that the Department may change the otherwise irrevocable value of the transition property in the event the transition charge goes above the transition charge cap in Boston Edison's Settlement Agreement (Appendix at 36, last line; at 47, line 10). Without this clarification, the Order may incorrectly imply that the RTC Charge can exceed the transition charge cap imposed by the Settlement Agreement. The Department also approves the Agencies' motion to clarify that any amount for additional credit enhancements which may be necessary are in addition to estimated transaction costs (D.T.E. 98-118 at 28, line 6; at 44, last line). As currently written, the language incorrectly implies that the estimated transaction costs includes amounts for credit enhancements.

Finally, the Department rejects the Agencies' proposed corrections to the estimated transaction costs and total amount to be securitized. In each case the numbers cited are clearly approximations which were taken from the Company's prefiled testimony or draft financing order proposed by the Company. Updating these numbers to reflect more recent estimates would have no effect on the transaction costs or final amounts to be securitized.

V. ORDER

Accordingly, after due notice, hearing and consideration, it is hereby

ORDERED: That the Massachusetts Development Finance Agency's and the Massachusetts Health and Educational Facility Authority's Motion for Clarification is APPROVED in part and DENIED in part as described herein; and it is

FURTHER ORDERED: That the Department's Order of April 2, 1999, in Boston Edison Company, D.T.E. 98-118, be and hereby is supplemented by, and clarified in accordance with the terms set forth herein.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

1. Although not characterized in this way by the Agencies, many of the requested "clarification edits" are more properly treated as requests for reconsideration.
2. On May 20, 1999, the Department requested comment on this modified language.

On May 21, 1999, the Agencies' responded that the language is satisfactory as it:

- a) should be sufficient to permit bankruptcy counsel to issue the appropriate opinions on true sale and non-consolidation; b) will address the concerns of the bond rating agencies so as to enable the RRBs to achieve the highest ratings; and c) is consistent with the non-recourse provisions of G.L. c. 164, § 1H (Agencies' Response to
- b) Request for Comments, May 21, 1999, at 1).